

DISCLAIMER

This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 26, 2000

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUE000343

For Approval of Generation Facilities
pursuant to Virginia Code § 56-580 D
or, in the Alternative, for approval of
expenditures pursuant to Virginia Code
§ 56-234.3 and for a Certificate of
Public Convenience and Necessity
pursuant to Virginia Code § 56-265.2

and

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUF000021

For authority under Chapters 3, 4, and
5 of Title 56 of the Code of Virginia
to participate in lease financing
arrangements for construction of
generation facilities, and for a
declaration of non-jurisdiction

ORDER INVITING COMMENTS AND RESPONSES AND PRESCRIBING NOTICE

On June 16, 2000, Virginia Electric and Power Company
("Virginia Power" or "the Company") filed an application with
the State Corporation Commission ("Commission") in which, among
other things, it proposes to construct a new generating plant
("new unit") at the Possum Point Power Station, scheduled to be
operational in May 2003 (hereafter collectively referred to as
"the Project"). The new unit has an estimated cost of \$280-\$300
million. The Company proposes to employ synthetic lease

financing for its lease and sublease of a portion of the real estate at the Possum Point plant upon which the new generating facility will be built.

The Company requested that the Commission approve the Project under § 56-580 D of the Code of Virginia. In addition, Virginia Power asked that the Commission: (i) declare that § 56-234.3 of the Code of Virginia does not require the Company to obtain prior regulatory approval before entering into the agreements necessary for the proposed synthetic lease financing, or (ii) in the alternative, grant an exemption from § 56-234.3 of the Code of Virginia or approve the Company's financial expenditures for the proposed lease and sublease transactions. The Application also seeks issuance of a certificate of public convenience and necessity under § 56-265.2 of the Code, should we determine that that section applies.

Virginia Power also filed a "Motion for Determination of Applicability of, or in the Alternative, for Exemption or Waiver from, Bidding Rules" ("Motion") with the captioned application. In its Motion, the Company requested that the Commission find that the Rules Governing the Use of Bidding Programs to Purchase Electricity from Other Power Suppliers ("Bidding Rules"), 20 VAC 5-301-10 et seq., adopted in Case No. PUE900029, are inapplicable to the Project. In the alternative, the Company requested that if the Commission determines that the Bidding

Rules apply, the Commission grant it an exemption or waiver from these Rules.

On July 5, 2000, Virginia Power filed an application seeking authority from the Commission to participate in lease financing arrangements of approximately \$300 million for the construction of the generation facilities at the Possum Point Power Station and for a declaration that the Commission will not assert jurisdiction over other parties participating in the transaction who will serve only as vehicles for financing the Project. This application also requests a declaration that § 56-234.3 of the Code of Virginia does not require prior Commission approval for the Company to enter into certain agreements in connection with the proposed financing or, in the alternative, approval under or exemption from that statute.

The July 5 application seeks approval under: (i) the Virginia Utility Securities Act, Chapter 3 of Title 56, because the financing arrangements may be considered to create an evidence of indebtedness; (ii) Chapter 4 of Title 56, because the transaction will involve jurisdictional contracts or arrangements between Virginia Power and a subsidiary of Dominion Energy, Inc., an affiliate; and (iii) Chapter 5 of Title 56 of the Code of Virginia because Virginia Power proposes to transfer real property at Possum Point, by means of a ground lease, on which the new facility will be constructed and will be

reacquiring the constructed facility and related real property as a sublessee.

NOW UPON consideration of the foregoing, the Commission is of the opinion and finds that the preliminary issues presented by Virginia Power's Motion and its June 16 and July 5 applications must be addressed in order to evaluate these applications properly and expeditiously. The threshold issue is whether the Bidding Rules apply to Virginia Power's Project. Additionally, the June 16 application raises the issue of which provisions of the Code of Virginia should guide consideration of the request to construct the unit. Lastly, should it be determined that Code § 56-234.3 applies, the Company seeks in both applications waiver or exemption from that statute.

In sum, the issues presented by the June 16 and July 5 application include:

- (1) Whether the Bidding Rules are applicable to the Project, or in the alternative, if they do apply, whether the Commission should grant Virginia Power an exemption to these Rules.

- (2) Whether the Commission should approve this Project exclusively under § 56-580 D of the Code of Virginia, or under §§ 56-234.3, and/or 56-265.2 as well.

- (3) If § 56-234.3 of the Code of Virginia applies to this project, whether the Company should be granted an exemption from that provision, or approval under it to make "at risk" financial expenditures in association with the Project.

Our consideration of the June 16 Application necessarily turns on resolution of those preliminary issues. Consideration of the merits of the Project makes little sense, for example, if it is determined that the Bidding Rules apply and there is a successful bidder to supply the capacity represented by the Project. Concurrent with resolution of the Bidding Rules' applicability, we will determine which statutory provisions apply to consideration of the Project, should it be found that Virginia Power may proceed with the Application.

We find that the June 16 and July 5 applications should be docketed; that a Hearing Examiner should be appointed pursuant to Rule 7:1 of the Commission's Rules of Practice and Procedure ("Rules") 5 VAC 5-10-520, to receive comment, legal memoranda and, if necessary, convene a hearing on the issues posed above; that interested persons should be given an opportunity to comment on the issues set out above as well as other issues of concern to them relating to these applications and to request hearing on the preliminary issues; and that the Company should give notice to the public of its applications and Motion.

Accordingly, IT IS ORDERED THAT:

(1) The June 16, 2000, application shall be docketed and assigned Case No. PUE000343.

(2) The July 5, 2000, application shall be docketed and assigned Case No. PUF000021.

(3) As part of Phase I of this proceeding and as provided by § 12.1-31 of the Code of Virginia and Rule 7:1 of the Commission's Rules, 5 VAC 5-10-520, a Hearing Examiner shall be appointed to consider the comments or memoranda filed herein, convene a hearing, if necessary, and within fourteen days thereafter, make a recommendation to the Commission concerning the preliminary issues outlined above. Participants in the case may file comments in response to the Hearing Examiner's Report within seven (7) business days of the Report's issuance by the Hearing Examiner.

(4) Copies of the June 16, and July 5, 2000, applications, Motion, and accompanying documents shall be made available for public inspection in the Commission's Document Control Center located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday. Copies of these documents may also be ordered from Virginia Power's counsel, Edward L. Flippen, Esquire, James C. Dimitri, Esquire, Stephen H. Watts, II, Esquire, and Kodwo Ghartey-Tagoe, Esquire, McGuire, Woods, Battle & Boothe LLP, 901 E. Cary Street, One James Center, Richmond, Virginia 23219.

(5) On or before August 21, 2000, any interested party may file with the Clerk of the Commission an original and fifteen (15) copies of comments or legal memoranda, responsive to the issues set out on page 4, supra, and may request hearing on those issues. Comments may be filed on other issues of interest to the filing party. Any person or entity filing shall serve a copy of their comments, memoranda, and requests for hearing on counsel for the Company, other parties of record, and the Staff, on or before August 21, 2000. Any request for hearing shall state with specificity why consideration of the issues cannot adequately be accommodated by consideration of the filed comments rather than by hearing.

(6) On or before August 21, 2000, the Staff of the State Corporation Commission may file with the Clerk of the Commission an original and fifteen (15) copies of comments responsive to the issues set forth on page 4, supra, and the June 16 and July 5 applications, and shall serve a copy of the same on counsel to the Company and other parties of record.

(7) Virginia Power shall respond to written interrogatories or requests for the production of documents and things within seven (7) calendar days after the receipt of the same. Except as so modified, discovery shall be in accordance with Part VI of the Rules, 5 VAC 5-10-470.

(8) On or before August 5, 2000, Virginia Power shall cause the following notice to be published on one occasion as classified advertising within newspapers of general circulation throughout the Company's service area:

NOTICE TO THE PUBLIC OF AN APPLICATION BY VIRGINIA ELECTRIC AND POWER COMPANY, FOR APPROVAL OF GENERATION FACILITIES AT POSSUM POINT POWER STATION IN PRINCE WILLIAM COUNTY, VIRGINIA, AND AN APPLICATION BY VIRGINIA ELECTRIC AND POWER COMPANY, FOR AUTHORITY UNDER CHAPTERS 3, 4, AND 5 OF TITLE 56 OF THE CODE OF VIRGINIA TO PARTICIPATE IN LEASE FINANCING ARRANGEMENTS CASE NOS. PUE000243 and PUF000021

On June 16, 2000, Virginia Electric and Power Company ("Virginia Power" or "the Company") filed an application with the State Corporation Commission ("Commission") which, among other things, proposed to construct a new 540 megawatt combined cycle facility operating on natural gas or distillate oil (hereafter collectively referred to as "Project") at its Possum Point Power Station in Prince William County, Virginia. The estimated cost of the new facility is \$ 280-\$300 million and it is proposed to be operational by May 2003. In its application, docketed as Case No. PUE000343, Virginia Power requested the Commission: (i) grant a certificate to construct and operate the project under § 56-580 D of the Code of Virginia; or (ii) in the alternative, approve expenditure for construction of the Project under § 56-234.3, or exempt the project from that statute, and grant a certificate of public convenience and necessity under § 56-265.2.

The Company also filed a Motion with its June 16 application that requested the Commission find that the Rules Governing the Use of Bidding Programs to Purchase Elec-

tricity from Other Power Suppliers ("Bidding Rules"), 20 VAC 5-301-10 et seq., do not apply to this Project. In the alternative, Virginia Power requested that the Commission grant it an exemption or waiver from the Bidding Rules.

On July 5, 2000, Virginia Power filed an application docketed as Case No. PUF000021, under Chapters 3, 4, and 5 of Title 56 of the Code of Virginia, seeking authority from the Commission to participate in lease financing arrangements of approximately \$300 million for the construction of the generation facilities at Possum Point, for a declaration that the Commission will not assert jurisdiction over the financing parties to the transaction, and for an exemption from, or approval under, § 56-234.3 or determination that it does not apply.

The Commission must make certain preliminary determinations in order to establish the proper processing for these applications. Accordingly, the Commission seeks comments, legal memoranda, or requests for hearing from interested parties on the following issues:

(1) Whether the Bidding Rules are applicable to the Project, or in the alternative, if they do apply, whether the Commission should grant Virginia Power an exemption to these Rules.

(2) Whether the Commission should approve this Project exclusively under § 56-580 D of the Code of Virginia, or under §§ 56-234.3, and/or 56-265.2 as well.

(3) If § 56-234.3 of the Code of Virginia applies to this project, whether the Company should be granted an exemption from that provision, or approval under it to make "at risk" financial expenditures in association with the Project.

Copies of Virginia Power's June 16 and July 5, 2000, applications and accompanying documents are available for public inspection between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, at the State Corporation Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23218, or can be ordered from counsel for the Company Edward L. Flippen, Esquire, James C. Dimitri, Esquire, Stephen H. Watts, II, Esquire, and Kodwo Ghartey-Tagoe, Esquire, McGuire, Woods, Battle & Boothe LLP, 901 East Cary Street, One James Center, Richmond, Virginia 23219.

Interested parties may file comments, legal memoranda, or requests for hearing on the preliminary issues set out above and comment on other issues of concern relating to these applications by filing an original and fifteen (15) copies of said comments, memorandum, or requests for hearing with the Clerk of the Commission. An original and fifteen (15) copies of each comment, memorandum, or request for hearing shall be filed with Joel H. Peck, Clerk of the Commission, at the address set forth below, referring to Case Nos. PUE000343 or Case No. PUF000021, as appropriate. Any comment, memorandum, or request for hearing must also be served on counsel for the Company, other parties of record, and the Commission Staff on or before August 21, 2000. Requests for hearing must state with specificity why consideration of the issues cannot be adequately accommodated by the consideration of the written pleadings rather than by hearing.

A copy of the Order Inviting Comments and Responses and Prescribing Notice may be obtained from the Clerk of the Commission via written request, or inspected at the

Commission's website: <http://www.state.us./scc/orders.htm>.

All written communications to the Commission concerning Virginia Power's application should be directed to Joel H. Peck, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and should refer to Case No. PUE000343 or Case No. PUF000021, or both, as appropriate.

VIRGINIA ELECTRIC AND POWER COMPANY

(9) On or before August 5, 2000, Virginia Power shall serve a copy of this Order on the chairman of the board of supervisors of any county and upon the mayor or manager of any county, city or town (or on equivalent officials in counties, towns and cities having alternative forms of government) within Virginia Power's service area. Service shall be made by first-class mail or delivery to the customary place of business or residence of the person served.

(10) On or before September 6, 2000, Virginia Power shall file proof of the publication and service required herein.

(11) This matter shall be continued for further orders of the Commission.